

1 testifying, and then you could ask your questions and then
2 you could ask it to be received at that time.

3 MR. SHOOK: Well, Your Honor, the Bureau would
4 request, with respect to Pathfinder though that this
5 document be admitted. We recognize that with respect to
6 Hicks --

7 JUDGE CHACHKIN: Well, wait a minute. When did
8 Pathfinder admit to?

9 MR. JOHNSON: Authenticity, Your Honor.

10 JUDGE CHACHKIN: Only authenticity.

11 If you wanted to get these documents into
12 evidence, you should have called Mr. Dille and Mr. Hicks.

13 MR. JOHNSON: Judge, let me --

14 JUDGE CHACHKIN: Assuming there is objections and
15 there is objections. Admissions are one thing because they
16 have --

17 MR. SHOOK: Right. Your Honor, in that sense, in
18 that sense, I understand the objection of Hicks. I didn't
19 understand --

20 JUDGE CHACHKIN: Well, I don't know if they are
21 objecting.

22 MR. JOHNSON: Your Honor, Pathfinder has no
23 objection to the admission of this document. I think Mr.
24 Hall is correct that it can't be admitted against Hicks at
25 this point, but we don't object.

1 JUDGE CHACHKIN: Do you want to limit it as to
2 admission against Mr. Dille?

3 MR. SHOOK: At this point in time, we will accept
4 that, Your Honor, with the understanding we have -- if Mr.
5 Hicks is placed on the stand, we will be able to question
6 him about this document.

7 MR. JOHNSON: You mean if Mr. Dille is placed on
8 the stand?

9 MR. SHOOK: No, if Mr. Hicks is placed on the
10 stand.

11 MR. HALL: You can ask him about it but --

12 JUDGE CHACHKIN: This is a memo from Dille.

13 MR. SHOOK: Well, we can also ask Mr. Dille
14 questions about it also.

15 JUDGE CHACHKIN: Well, he's the one who would have
16 knowledge of presumably. It's his memo.

17 MR. SHOOK: Let me make sure I understand where we
18 are on this then. Page 31 is not being admitted into
19 evidence with respect to Hicks, correct?

20 JUDGE CHACHKIN: What part of it deals with
21 admission of Mr. Dille?

22 MR. SHOOK: Well, specifically, Your Honor, in
23 terms of the second paragraph and whether or not any kind of
24 arrangement or agreement existed relative to the future
25 ownership of the entity that's being described here.

1 JUDGE CHACHKIN: Well, this deals with a
2 conversation between Mr. Dille and Mr. Booth in which they
3 discuss the matter. So what I'm receiving it for is for the
4 fact that there was such discussions, not for the truth of
5 the matters contained therein until you have an opportunity
6 to, if you wish, cross-examine Mr. Hicks and Mr. Dilly. I
7 will receive it for the limited purpose that there was such
8 discussions. That's the purpose I'm limit it to now.

9 MR. SHOOK: I understand, Your Honor.

10 JUDGE CHACHKIN: Otherwise, it's hearsay.

11 MR. SHOOK: I understand.

12 JUDGE CHACHKIN: All right. Page 31 is being
13 received for the limited purpose indicated.

14 (The document referred to,
15 having been previously marked
16 for identification as MMB
17 Exhibit No. 1, page 31 was
18 received into evidence.)

19 MR. HALL: Page 32, Your Honor, we would have the
20 same problem with.

21 JUDGE CHACHKIN: What's the position of
22 Pathfinder?

23 MR. JOHNSON: Your Honor, we certainly don't --
24 we're talking about page 32?

25 JUDGE CHACHKIN: Yes.

1 MR. JOHNSON: We don't have any objection.

2 JUDGE CHACHKIN: All right, page 32 will be
3 received. I should make clear page 31 will be received for
4 the limited purpose insofar as Hicks is concerned and will
5 be received without limitation so far as Pathfinder is
6 concerned.

7 Same ruling with respect to page 32.

8 (The document referred to,
9 having been previously marked
10 for identification as MMB
11 Exhibit No. 1, page 32 was
12 received into evidence.)

13 MR. HALL: And the limited purpose is not for the
14 truth of the matters asserted.

15 JUDGE CHACHKIN: Insofar as Mr. Hicks is
16 concerned.

17 MR. HALL: Yes.

18 Same issue with regard to the next attachment,
19 which runs from pages 33 through 39. These are
20 correspondence back and forth between the Dille children and
21 Mr. Watson in November of '93, November or thereabouts.

22 JUDGE CHACHKIN: What are you questioning there?

23 MR. HALL: Again, Your Honor, there is no
24 indication that Hicks Broadcasting as a corporate entity was
25 aware of any of this activity.

1 MR. SHOOK: The entity didn't even exist.

2 MR. HALL: That's correct.

3 JUDGE CHACHKIN: Well, the documents merely state
4 a fact that there was a deposit made. I think that's
5 reliable hearsay. Unless you can show otherwise, I'm going
6 to receive it for all purposes. What was that 33? Thirty-
7 three to what?

8 MR. HALL: Thirty-three through 39, Your Honor.

9 JUDGE CHACHKIN: It will be received as reliable
10 hearsay.

11 (The document referred, having
12 been previously marked for
13 identification as MMB Exhibit
14 No. 1, pages 33 through 39,
15 inclusive, were received into
16 evidence.)

17 JUDGE CHACHKIN: The next page is 40.

18 MR. HALL: We have no objection to that, Your
19 Honor.

20 MR. JOHNSON: No objection, Your Honor.

21 JUDGE CHACHKIN: Forty is received.

22 //

23 //

24 //

25 (The document referred to,

Heritage Reporting Corporation
(202) 628-4888

1 having been previously marked
2 for identification as MMB
3 Exhibit 1, page 40 was
4 received into evidence.)

5 JUDGE CHACHKIN: Forty-one?

6 MR. HALL: No objection.

7 MR. JOHNSON: No objection.

8 JUDGE CHACHKIN: Forty-one is received.

9 (The document referred to,
10 having been previously marked
11 for identification as MMB
12 Exhibit No. 1, page 41 was
13 received into evidence.)

14 JUDGE CHACHKIN: What about 42?

15 MR. HALL: Forty-two through 43, we have no
16 objection to, Your Honor.

17 MR. JOHNSON: No objection.

18 JUDGE CHACHKIN: It's received.

19 (The document referred to,
20 having been previously marked
21 for identification as MMB
22 Exhibit No. 1, pages 42 and 43
23 were received into evidence.)

24 JUDGE CHACHKIN: Forty-four?

25 MR. HALL: None.

1 JUDGE CHACHKIN: None.

2 JUDGE CHACHKIN: Forty-four is received.

3 (The document referred to,
4 having been previously marked
5 for identification as MMB
6 Exhibit No. 1, page 44 was
7 received into evidence.)

8 JUDGE CHACHKIN: Forty-five?

9 MR. HALL: None.

10 JUDGE CHACHKIN: Forty-five is received.

11 (The document referred to,
12 having been previously marked
13 for identification as MMB
14 Exhibit No. 1, page 45 was
15 received into evidence.)

16 JUDGE CHACHKIN: Forty-six?

17 MR. HALL: The same objection we had, Your Honor,
18 which is --

19 JUDGE CHACHKIN: I'll receive it.

20 //

21 //

22 //

23 //

24 //

25 (The document referred to,

1 having been previously marked
2 for identification as MMB
3 Exhibit No. 1, page 46 was
4 received into evidence.)

5 JUDGE CHACHKIN: Forty-seven, same objection?

6 MR. HALL: Yes, Your Honor.

7 JUDGE CHACHKIN: It's overruled. Received.

8 (The document referred to,
9 having been previously marked
10 for identification as MMB
11 Exhibit No. 1, page 47 was
12 received into evidence.)

13 JUDGE CHACHKIN: Forty-eight is also received.

14 MR. HALL: Over objections.

15 JUDGE CHACHKIN: I understand.

16 (The document referred to,
17 having been previously marked
18 for identification as MMB
19 Exhibit No. 1, page 48 was
20 received into evidence.)

21 JUDGE CHACHKIN: And then we come to 49, which is
22 a transmittal letter. Any objection to that?

23 MR. JOHNSON: We don't have any objection.

24 MR. HALL: No, Your Honor.

25 JUDGE CHACHKIN: Forty-nine is received.

1 (The document referred to,
2 having been previously marked
3 for identification as MMB
4 Exhibit No. 1, page 49 was
5 received into evidence.)

6 JUDGE CHACHKIN: Fifty?

7 MR. HALL: This entire document relates to, I
8 believe, Exhibit 49 is a response to Pathfinder to a letter
9 of inquiry.

10 JUDGE CHACHKIN: Fifty is a letter of inquiry?
11 Fifty to?

12 MR. HALL: I think all the way through, all the
13 way through the deposition.

14 MR. SHOOK: May we point out to counsel beginning
15 on page 84 --

16 MR. HALL: It is also Hicks' response.

17 MR. SHOOK: -- it includes Hicks' response.

18 MR. HALL: Right. We have no objection.

19 JUDGE CHACHKIN: All right. Pathfinder has no
20 objection?

21 MR. JOHNSON: No, Your Honor.

22 JUDGE CHACHKIN: Fifty to 80 --

23 MR. HALL: Through 115, Your Honor.

24 JUDGE CHACHKIN: -- 115 is received.

25 (The document referred to,

1 having been previously marked
2 for identification as MMB
3 Exhibit No. 1, pp. 50 through
4 115 was received into
5 evidence.)

6 JUDGE CHACHKIN: That takes care of that exhibit?

7 MR. HALL: Except for the depositions.

8 JUDGE CHACHKIN: Except for the depositions. All
9 right.

10 MR. JOHNSON: I'm sorry, Your Honor, did you
11 receive 84 through 115? This would be the response of Hicks
12 Broadcasting?

13 JUDGE CHACHKIN: Yes.

14 MR. JOHNSON: I think it is analogous to the
15 request for admissions, so therefore conceivably your same
16 ruling would control, but we would object to the admission
17 against Pathfinder for the record.

18 JUDGE CHACHKIN: All right.

19 MR. SHOOK: With that, I would just point out to
20 Your Honor the declaration that appears on page 112.

21 MR. JOHNSON: I withdraw my objection, counsel.
22 Sorry. My fault.

23 JUDGE CHACHKIN: All right, no objections.
24 So now we get to the deposition, correct?

25 MR. SHOOK: Yes, sir.

1 JUDGE CHACHKIN: All right, first of all, let me
2 just say briefly there may be a misapprehension concerning
3 my ruling. I agree with you that the Commission in their
4 rules made clear that you couldn't try a case by putting in
5 en mass depositions taken in a proceeding. I don't think
6 there is any dispute about that, and I was not contending
7 that.

8 But the Commission in no way precluded the use of
9 portions of depositions taken in Commission proceedings for
10 purposes of either impeachment or admission purposes.

11 So similarly, all other depositions taken in other
12 proceedings could come in either as admissions or for
13 purposes of impeachment.

14 Now, the Commission's rules deal only, as properly
15 it should, with its own deposition discovery proceedings.
16 But nowhere is the Commission setting up a separate rule
17 saying such admission -- parts of depositions or other
18 writings can't come in as admissions or for purposes of
19 impeachment if they fit within the Federal Rules of
20 Evidence.

21 And so if you have any objection on the grounds of
22 relevancy or somehow that 801 doesn't apply, then I will
23 certainly listen to those arguments.

24 MR. JOHNSON: Your Honor, for purposes of
25 Pathfinder as it relates to Mr. Dille's objection, we would

1 reserve the objection articulated in our brief as it relates
2 to the Commission's rules, but Your Honor has already
3 expressed your view about that.

4 By way of further objection, let me just state
5 that we have no additional objection other than the one
6 already to Mr. Dille's deposition.

7 MR. HALL: We concur on that, Your Honor.

8 JUDGE CHACHKIN: So what we have to do is we have
9 to go through the deposition and the portions which the
10 Bureau wants to put in for admissions or for impeachment
11 have to be considered, and so we'll start with -- what's the
12 first deposition?

13 MR. SHOOK: The deposition of Mr. Dille.

14 JUDGE CHACHKIN: Mr. Dille.

15 MR. HALL: If I can make, on behalf of Hicks
16 Broadcasting and Global, my understanding is, Your Honor,
17 that these are coming in under 801(D)(2)(d) --

18 JUDGE CHACHKIN: That's right.

19 MR. HALL: -- as admissions?

20 My understanding is 801(D)(2)(d) is limited to
21 statements by an agent or employment -- or agent or servant
22 of the party. It has to be used against that party. Mr.
23 Dille has never had an agency or employment relationship
24 with Hicks Broadcasting, and so we take the position that
25 none of this can come in against Hicks Broadcasting.

1 MR. SHOOK: Your Honor, I would beg to differ in
2 terms of what the evidence has shown and certainly suggests
3 with respect to both Mr. Dille and those in his employ who
4 perform services on behalf of Hicks Broadcasting, and from
5 the Bureau's point of view rendered financial aid to Hicks
6 Broadcasting.

7 MR. HALL: Well, we're talking about a statement
8 by Mr. Dille. To the extent we're getting to Mr. Watson, we
9 agree that there are statements that he makes in an agency
10 relationship through the independent contractor relationship
11 that would be considered admissions against Hicks, and we've
12 got no problem with that.

13 But Mr. Dille, who is being deposed here in his
14 personal role, and making statements, and he has never had
15 an agency or employment relationship with Hicks
16 Broadcasting, I don't think that's been established by
17 anything we've heard so far.

18 JUDGE CHACHKIN: Well, I'm not going to make a
19 ruling now whether or not it can be used against Hicks or
20 not. We'll just have to see what the record -- when all the
21 evidence is in where we are.

22 At this point the question is whether it's
23 receivable or should be received for any purpose. So where
24 do we -- we start now with -- all right.

25 We're interested on page 3, lines 1 to 17.

1 MR. HALL: A statement by Mr. Sackley's counsel.
2 It's not a statement by Mr. Dille. I don't see how that is
3 an admission.

4 JUDGE CHACHKIN: Well, certainly it isn't if
5 that's what it is. And by the pages, I'm talking about the
6 pages in the page of the deposition for the record.

7 So page 3 is statements by counsel. Clearly that
8 can't come in as an admission. I don't know what his
9 purpose is of being in there.

10 MR. SHOOK: Your Honor, if I may explain. The
11 reason for it being there is simply to make clear on the
12 record that Mr. Dille is being deposed, that he's being
13 sworn and that he understand what the proceeding is about.

14 JUDGE CHACHKIN: Well, I think we can stipulate
15 that he was sworn. We don't need counsel's statement. I
16 think we can stipulate it was Mr. Dille's deposition.

17 MR. SHOOK: Well, with that in mind, that's
18 acceptable.

19 JUDGE CHACHKIN: All right, so that would go to
20 page 8, lines 10 to page 9, lines 1 to 7.

21 MR. JOHNSON: Your Honor, if I may just ask a
22 clarifying question of Mr. Shook. I think this is accurate
23 that by and large this is the entirety of the deposition,
24 and the exclusions are portions of the deposition -- there
25 may be others, but at least all of the portions of the

1 deposition which deal with deposition exhibits have been
2 excluded.

3 MR. SHOOK: By and large, they have, and our
4 thought behind what we have done here is to simply try to
5 put into the record those portions of the deposition which
6 we believe relevant to the issues in this proceeding.

7 So to the extent that any arguments or question
8 and answer occurred relative to issues that might have been
9 peculiar to the Circuit Court proceeding, we endeavored not
10 to include those.

11 MR. JOHNSON: Thank you, Jim.

12 MR. GUZMAN: Let me just follow up there. You
13 said by and large there were no exhibits introduced as part
14 of the attempt to introduce things into the record.

15 Were there any exhibits that you introduced?

16 MR. SHOOK: There is certainly nothing that comes
17 to mind right now. But as we go through this, it may be
18 that there will be one or two documents that are described
19 in some fashion. But as I said, there is no particular
20 document that came in during this deposition that we are
21 trying to sneak in through the back door, if you will.

22 MR. JOHNSON: No, we didn't think so. We just
23 wanted the testimony to be clear to the extent it was in
24 reference to a document, if the document were not part of
25 the record.

1 Jim, the only one I'm aware of is in the last,
2 page 128 there is a reference to the amendment as an
3 exhibit, but that was the only one I found in Mr. Dille's
4 deposition.

5 JUDGE CHACHKIN: Now, Mr. Shook, you have
6 admissions of Pathfinder which I presume contain many of the
7 background information, which seems to be duplicate of what
8 you already have.

9 Why do you want to put it in here?

10 MR. SHOOK: Your Honor, what we were considering
11 was simply background information, by and large.

12 JUDGE CHACHKIN: You already have that, don't you,
13 in the admissions?

14 MR. SHOOK: Your Honor, to the extent --

15 JUDGE CHACHKIN: Or is there something still of
16 importance that we need?

17 MR. SHOOK: Your Honor, to the extent that any
18 particular part -- I mean, I have -- I have before me right
19 now, you know, what I sent to you in terms of what we
20 believe to be relevant at the time we put this document
21 together. And if it turns out that there are certain
22 portions of it which duplicate material that's already in
23 here, we certainly don't need it in. I'm just not sure at
24 this point, you know, what the best course would be for
25 limiting that.

1 JUDGE CHACHKIN: Well, I would have had in mind if
2 you were going to put in admissions, that you would put in
3 admissions which have some substantial importance; not all
4 this background stuff which is already in the record. And
5 the mere fact he said it at his deposition doesn't seem to
6 me it advances it at all. That's not what you use
7 admissions for, to put in all kinds of extraneous
8 information.

9 MR. SHOOK: Your Honor, we're certainly not --

10 JUDGE CHACHKIN: But absent particular
11 information, which is at variance with other testimony, then
12 that's the type of information you put in. You don't just
13 clog up the record with all kinds of background information.

14 MR. CRISPIN: Your Honor, I agree with what you've
15 just said, and I am wondering if it makes any sense -- this
16 is just a suggestion -- that this process be deferred until
17 after Messrs. Dille and Hicks testify. Then perhaps counsel
18 for the Mass Media Bureau could revisit these depositions
19 and exclude those matters which are either admitted in the
20 admission or admitted on the witness stand so that we don't
21 have that kind of replication.

22 JUDGE CHACHKIN: There are already in the
23 admissions questions about where he's employed and things of
24 that nature.

25 Why do we need it here? We already know. He's

1 already admitted many of these things, I assume. There is
2 no really disagree about much of this information. It's
3 only, I assume, certain questions and answer you are
4 interested in getting in. That's what we should be dealing
5 with. We shouldn't be dealing with all of this other stuff.
6 In fact, I assume most of this can be stipulated. The only
7 thing, I assume, that you couldn't stipulate is certain -- I
8 would imagine 83 or 84 lines in this deposition are probably
9 an issue here.

10 MR. JOHNSON: It's certainly true, Your Honor,
11 that a great many of the core facts are in dispute, and I'm
12 not -- Mr. Crispin's idea seems particularly appealing to
13 me, but maybe because it's just hot in the room.

14 MR. SHOOK: Your Honor, I'll say that it appeals
15 to me too. Your Honor, Mr. Crispin's idea appeals to me
16 too.

17 JUDGE CHACHKIN: Well, what I would suggest is
18 that you get together with counsel and go over these
19 admissions and stipulate where there is no facts which are
20 not in dispute, and they're relevant, such as background and
21 what have you, and just let it in the record, if it doesn't
22 hurt the record. And thing which are in dispute is what
23 we'll deal with. And I would suggest, I'm certain that part
24 of Mr. Dille's and Mr. Hicks', probably 75 percent of the
25 material here is probably not in dispute; if not more, more

1 90 percent.

2 So why don't you get together with counsel, rather
3 than we go through this process after Mr. Dille and Mr.
4 Hicks testify, as to what you could stipulate to, and let
5 this in as part of the stipulation, and we'll just argue
6 about those portions which are worth arguing about.

7 So I'll defer ruling on Mr. Dille's deposition
8 until after you discuss it with counsel and see if you can't
9 reach stipulations as to portions of that testimony material
10 here.

11 I mean, counsel right now has the pages and he
12 could state whether he has any objections to stipulating to
13 this material.

14 MR. WERNER: Your Honor, to the extent that these
15 same issues are likely to be raised with regard to a number
16 of the other transcript that Mr. Shook is proposing to
17 introduce --

18 JUDGE CHACHKIN: Well, it may not. It's a
19 different story because we don't have -- the Dille children
20 aren't going to testify. So we have a different proposition
21 there.

22 All right, so as far as Mr. Hicks, what number is
23 that?

24 MR. HALL: That would be Bureau Exhibit 3.

25 MR. SHOOK: No, Bureau Exhibit 4 is Hicks response

1 to our request for admissions. So at this stage of the
2 offer, we would offer Mass Media Bureau Exhibit 4 which
3 consists of 20 pages.

4 JUDGE CHACHKIN: All right. Mass Media Bureau
5 Exhibit 4. What about the deposition of Sarah Dille and
6 Steve Kline?

7 MR. SHOOK: Your Honor, those appear in Exhibit 3
8 and --

9 JUDGE CHACHKIN: Okay, we're dealing now with
10 Exhibit 2. What are we dealing with?

11 MR. HALL: We haven't quite finished with Exhibit
12 1 actually.

13 JUDGE CHACHKIN: Exhibit 1, we have the deposition
14 of Watson, that's the only one.

15 MR. JOHNSON: I think that's right, Judge.

16 JUDGE CHACHKIN: All right.

17 MR. SHOOK: And with respect to that portion of
18 Exhibit 1, the Bureau does not feel the need to offer that
19 exhibit or that portion.

20 JUDGE CHACHKIN: Oh, you're not offering the
21 deposition of Mr. Watson?

22 MR. SHOOK: Mr. Watson. We don't need it.

23 JUDGE CHACHKIN: Fine, it will save some time.

24 MR. SHOOK: Anything to make you happy, .Your
25 Honor.

1 JUDGE CHACHKIN: All right.

2 (Laughter.)

3 JUDGE CHACHKIN: So Mass Media Bureau Exhibit 1,
4 Attachment 13, is not being offered.

5 And I've deferred a ruling with respect to the
6 deposition of Hicks, Attachment I and J, I assume it is.
7 Were there two depositions?

8 MR. HALL: Two days worth of deposition.

9 JUDGE CHACHKIN: Two days worth of deposition.

10 MR. SHOOK: Now, at this point that was
11 referencing Mass Media Bureau Exhibit 3. I just want to
12 make sure we're talking about the same thing.

13 MR. HALL: Right.

14 JUDGE CHACHKIN: Exhibit 3 is Attachment K. Is
15 that the next one we're taking up?

16 MR. HALL: We didn't do Attachment A or C or B.

17 MR. SHOOK: Right, we have to do Attachment A of
18 Exhibit 3. It begins on page 12 and --

19 JUDGE CHACHKIN: Exhibit 3.

20 MR. HALL: Exhibit 3, yes.

21 JUDGE CHACHKIN: We're still in Volume 1.

22 MR. HALL: Yes.

23 JUDGE CHACHKIN: All right. What are we concerned
24 now with?

25 MR. SHOOK: Attachment A, which begins on page 12

1 and --

2 JUDGE CHACHKIN: Page 12.

3 MR. SHOOK: -- goes to page 84.

4 JUDGE CHACHKIN: All right.

5 MR. HALL: No objection, Your Honor.

6 MR. JOHNSON: No objection, Your Honor.

7 JUDGE CHACHKIN: Well, that makes it easy. There
8 is no objection to page 12 through 84 of Bureau Exhibit 3.

9 (The document referred to,
10 having been previously marked
11 for identification as MMB
12 Exhibit No. 3, pages 12
13 through 84 were received into
14 evidence.)

15 MR. SHOOK: Pages 85 and 86.

16 MR. HALL: No objections.

17 MR. JOHNSON: None.

18 JUDGE CHACHKIN: Eighty-five and 86 is also
19 received.

20 (The document referred to,
21 having been previously marked
22 for identification as MMB
23 Exhibit No. 3, pages 85 and 86
24 were received into evidence.)

25 MR. SHOOK: Pages 87 through --

1 MR. GUZMAN: 106?

2 MR. SHOOK: Yes, 106. Thank you.

3 MR. HALL: I don't have an objection. I have an
4 offer or a clarification.

5 This particular version is not signed by the
6 minority members. I believe one of the Hicks exhibits has a
7 fully executed version of this. It can come in because
8 witnesses have been discussing it, but just so you know. It
9 would make sense to get the other one in as well.

10 MR. SHOOK: Sure. Did you offer that other one?

11 MR. HALL: Not yet.

12 JUDGE CHACHKIN: Do you still want to offer this
13 exhibit?

14 MR. HALL: Maybe for the sake of the record since
15 this has been asked the witnesses about.

16 JUDGE CHACHKIN: Oh, all right. Then we'll
17 receive it. Page 87 to 106 shall be received.

18 (The document referred to,
19 having been previously marked
20 for identification as MMB
21 Exhibit No. 3, pages 87
22 through 106 were received into
23 evidence.)

24 MR. SHOOK: And we understand that a ruling is
25 being deferred on the deposition of Mr. Hicks, which goes

1 from 107 through 177.

2 JUDGE CHACHKIN: Unless in the case of Mr. Hicks,
3 you can ask me for everything under the sun to come in.

4 MR. SHOOK: Well, let me check, Your Honor.

5 MR. HALL: Definitely the majority of it.

6 MR. SHOOK: Right. Depending on one's point of
7 view, there are substantial portions which we do not intend
8 to offer.

9 JUDGE CHACHKIN: Well, this is the same case. The
10 parties can get together and see if they can't work out a
11 stipulation as to certain material, and then we'll take up
12 the ones which are in controversy. If we can't get a
13 stipulation, then we'll go over it line by line.

14 MR. SHOOK: Your Honor, that brings us to
15 Attachment K which is the deposition of John F. Dille IV.

16 JUDGE CHACHKIN: All right.

17 MR. SHOOK: We have the portions --

18 JUDGE CHACHKIN: What volume is that in?

19 MR. SHOOK: That is in Volume 1. It's Exhibit 3.
20 It begins on page 178.

21 JUDGE CHACHKIN: All right.

22 MR. HALL: It ends at 182, I believe.

23 MR. SHOOK: Yes, it ends at 182.

24 MR. HALL: Hicks objects, Your Honor, in total.

25 Again, we believe that Flint Dille was a minority owner and

1 is not the type of agency or employment that is contemplated
2 in 801(D)(2)(d). And must of what they have designated has
3 nothing to do with Hicks Broadcasting. It has to do with
4 what he did for Sign Pro, his investment in the company,
5 which he has not an agency or employment relationship; what
6 his brother is doing, things like that. We can go over it
7 line by line.

8 JUDGE CHACHKIN: I guess we'll go over it line by
9 line.

10 MR. HALL: As a general matter, we object because
11 Flint Dille, and Sarah Dille, for that matter, as minority
12 owners, except in limited circumstances where they might be
13 authorized by the company to act as an agent, for example,
14 when Flint signed the certificate related to the formation
15 of Hicks Broadcasting, generally speaking, the minority
16 ownership relationship does not make them an agent or
17 servant for all purposes.

18 JUDGE CHACHKIN: Well, they're principles. Hicks
19 Broadcasting

20 MR. HALL: They're minority owners.

21 JUDGE CHACHKIN: Well, aren't they a principal as
22 a minority owner, a principle?

23 MR. HALL: I don't believe so, Your Honor. They
24 certainly wouldn't be under 801(D)(2)(d), which does not
25 deal with principals. It deals with agents and servants.

1 JUDGE CHACHKIN: I think it also deals with
2 principals. I don't understand that it deals with agents.
3 It certainly deals with principals.

4 MR. HALL: Well, that would be, I think, a
5 different exception under (d)(ii), Your Honor. I don't
6 think a minority owner is deemed to be a party. That would
7 be 802(D)(2)(a), the party's own statement. I don't believe
8 the minority owner has the capability of buying the --

9 JUDGE CHACHKIN: All right, let's take the (2)(a)
10 statements made by a party opponent.

11 MR. HALL: I don't believe that a minority owner
12 of a company, Your Honor, is considered a party.

13 JUDGE CHACHKIN: Well, I disagree with you. I'll
14 overrule that objection.

15 Any other objections to any portions of this?

16 MR. HALL: Yes, Your Honor.

17 JUDGE CHACHKIN: All right, tell me what it is.

18 MR. HALL: Well, starting with 3, lines 1 through
19 4, that's the statement -- apparently it's the court
20 reporter. It's not a statement by even Mr. Sackley's
21 attorney. They're just saying Mr. Dille's name, sworn. We
22 can stipulate that he's being deposed.

23 MR. SHOOK: That's acceptable.

24 MR. HALL: Line -- let's see, I'm sorry. Page 11,
25 line 11. I mean, this is background information concerning

1 his education. I don't see how that is an admission of
2 Hicks Broadcasting. It's not even relevant to this
3 proceeding.

4 JUDGE CHACHKIN: Overruled. I think it's relevant
5 in the context of this case to know who these children are
6 and connections.

7 MR. HALL: I'm not arguing relevance here. We're
8 talking hearsay, Your Honor and whether there is an
9 exception to the hearsay rule. But there is plenty of this
10 stuff that's relevant that is also hearsay.

11 JUDGE CHACHKIN: Well, as I say, I think there is
12 an exception, and this is an exception to the hearsay rule.
13 I'm not going to require the Bureau to produce these
14 witnesses.

15 MR. HALL: On that basis, Your Honor's ruling
16 takes care of our objections.

17 JUDGE CHACHKIN: All right. I will receive, what
18 is it?

19 MR. SHOOK: It's Mass Media Bureau Exhibit 3,
20 Attachment K, lines so reflected in our letter to Your Honor
21 and the parties.

22 JUDGE CHACHKIN: All right, that will be received.

23 //

24 //

25 (The document referred to,

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1 having been previously marked
2 for identification as MMB
3 Exhibit No. 3, Attachment K
4 was received into evidence.)

5 MR. SHOOK: The Bureau would also offer
6 Attachments L, which begins at page 183 and goes through
7 page 187, subject to the limitations noted on our letter to
8 Your Honor and the parties.

9 JUDGE CHACHKIN: What limitations?

10 MR. SHOOK: In terms of what is exactly being
11 offered.

12 JUDGE CHACHKIN: Oh, I see. All right.

13 MR. HALL: Your Honor, we'll raise the same
14 objection.

15 JUDGE CHACHKIN: All right, the objection is
16 overruled.

17 MR. HALL: And we won't be bothered with the line
18 for line.

19 JUDGE CHACHKIN: All right, Attachment L, Mass
20 Media Bureau Exhibit 3, Attachment L is received.

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25 (The document referred to,

1 having been previously marked
2 for identification as MMB
3 Exhibit No. 3, pages 178
4 through 182 were received into
5 evidence.)

6 JUDGE CHACHKIN: And Attachment M?

7 MR. SHOOK: Attachment M has already been ruled
8 on, I believe, Your Honor.

9 MR. HALL: I don't recall that happening.

10 JUDGE CHACHKIN: I don't think it's been ruled on.
11 Has it?

12 MR. SHOOK: Perhaps I'm misremembering. Was the
13 ruling on Mr. Kline deferred?

14 JUDGE CHACHKIN: I don't think you offered --

15 MR. JOHNSON: Your Honor, I think that's what
16 started this fight.

17 MR. SHOOK: I had understood at the conclusion of
18 Mr. Kline's testimony, that we did make an offer.

19 JUDGE CHACHKIN: Well, let's see it again. Page
20 3, lines 1 through 12.

21 MR. SHOOK: Again, we can certainly stipulate that
22 information that appears on page 3. The guts of it would be
23 what we have denominated as page 4, line 18 to page 23, line
24 10.

25 JUDGE CHACHKIN: All of page 18?

1 MR. SHOOK: Yes, sir. It begins at page 4, line
2 18, to page 23, line 10. That's what we wish to offer.

3 JUDGE CHACHKIN: Is this contrary to his
4 testimony? He testified.

5 MR. SHOOK: Your Honor, in some respects he did.
6 In other respects, there were some differences between his
7 testimony and what appears here; some of which was
8 specifically pointed out to him through questions, specific
9 questions that were put to him.

10 Your Honor, in order to determine what, if
11 anything, might be redundant, I'm afraid we'd have to step
12 back and take a look at this again because when this letter
13 was put together it was prior to the time Mr. Kline took the
14 stand.

15 JUDGE CHACHKIN: Well, you're just going to have
16 to do that and tell me which of these portions you believe
17 are admissions which are contrary to what he said. We're
18 not just going to have duplicate testimony.

19 MR. SHOOK: Very good.

20 JUDGE CHACHKIN: When can you let us know about
21 that?

22 MR. SHOOK: Well, we do have the next three days
23 in recess, and I had assumed from Your Honor's other rulings
24 that that's the point when we would get together and discuss
25 the depositions with the other counsel so that come Monday

1 morning we would be able to submit stipulated deposition
2 testimony, to the extent there was any, and to the extent
3 there wasn't, we would have a revised listing of those
4 portions of the depositions that we wish to offer into
5 evidence.

6 JUDGE CHACHKIN: All right. Because, as I made
7 clear, that the purpose of -- I made clear that it didn't
8 intend that the parties could put in depositions en mass or
9 even portions of depositions en mass unless the constitute
10 admissions, and so you just can't put in all kinds of
11 material which has already been testified to unless somehow
12 it's contradictory to what he testified in this proceeding
13 and you want to offer it as an admission. Otherwise, it's
14 contrary to what the Commission's purposes in allowing
15 deposition testimony.

16 MR. SHOOK: We will keep that admonition in mind
17 as we determine what portions to offer.

18 JUDGE CHACHKIN: All right. So I'm deferring
19 ruling on Mr. Dille, Mr. Hicks, and Mr. Kline.

20 Now, do the parties need until Monday to do this
21 or can they do this tomorrow and we can have a short session
22 on Friday and get this over with?

23 I think that's a better idea. Then you could
24 start your --

25 MR. HALL: That probably is, Your Honor.

1 JUDGE CHACHKIN: So we'll have a session Friday at
2 10:00 a.m., take up these three matters. I'm sure we'll be
3 brief, and then Monday you can start with your witnesses.

4 All right.

5 MR. JOHNSON: Thank you, Judge.

6 (Whereupon, at 3:30 p.m., the hearing was
7 recessed, to resume at 10:00 a.m., on Friday, October 30,
8 1998.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 98-66
CASE TITLE: IN RE: HICKS BROADCASTING
HEARING DATE: October 27, 1998
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 10-27-98
George Holmes *George Holmes*
Official Reporter
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Washington, D.C. 20005

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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

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